IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

–

WRIT PETITION NO : 16004 of 2004

Between:

M. Subba Rao, S/o. Late Satyanarayana,
aged 62 years, R/o. 9-109, Saibaba Temple Lane, Dilshuknagar, Hyderabad.

..... PETITIONER

AND

1. Central Bank of India, Central Office;
Chander Mukhi, Nariman Point
Mumbai 400 001, Rep. by its Managing Director.
2. The General Manager (PRS), Central Bank of India,
Central Office: Chander Mukhi, Nariman Point,
Mumbai 400 001.
3. The Zonal Manager, Central Bank of India,
Zonal Office : Bank Street, Koti, Hyderabad.
4. The Regional Manager, Central Bank of India,
Vijayawada Regional Office, Bandar Road, Vijayawada.
5. Branch Manager, Central Bank of India,
Governorpet Branch, Governorpet, Vijayawada 520002.

..RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an order direction or writ particularly one in the nature of Writ Mandamus or any other appropriate Writ declaring the proceedings No.ZO:PRS:2004-05:1306 dated 19-08-2004 issued by the Zonal Manager as illegal, arbitrary and unjust; (ii) declare the action on part of the respondent-Bank in not releasing the pensionary benefits due to the petitioner in pursuance of the pension scheme consequent on retirement on 31-3-2001 as illegal and

arbitrary; and (iii) consequently direct the respondent-Bank to release the pension to the petitioner as per the Central Bank of India Employees (Pension) Regulations, 1993 with all consequential benefits

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the Respondents : MR.ALLURI KRISHNAM RAJU

The Court made the following:

THE HONOURABLE SRI JUSTICE K.C. BHANU

WRIT PETITION No.16004 OF 2004

ORDER:

This writ petition is filed with a prayer to declare the proceedings No.ZO:PRS:2004-05:1306, dated 19.08.2004, issued by the third respondent-Zonal Manager, Central Bank of India and the action of the respondents-Central Bank of India in not releasing the pensionary benefits due to the petitioner in pursuance of the pension scheme, as illegal and arbitrary, and with a consequential prayer to release the pension to the petitioner as per the Central Bank of India (Employees') Pension Regulations, 1993.

The brief facts, that are necessary for disposal of the writ petition, are as follows:

The petitioner joined in the first respondent, Central Bank of India, in the year 1964 as a Peon. Subsequently, he was promoted as a Clerk-cum-Cashier in the year 1971 and as an Officer Cashier in the year 1981, and that he retired from the service on 31.03.2001 under Voluntary Retirement Scheme (for short "VRS"). In the year 1994, the first respondent introduced a pension scheme known as 'Central Bank of India (Employees') Pension Regulations, 1993' and all the employees, who were working in the first respondent-bank as on 31.12.1993, were asked to give option for pension in terms of the notification issued by the first respondent. The petitioner, *vide* Option Form, dated 30.06.1994, opted to become a member of the pension scheme and ceased to be a member of the Contributory Provident Fund Pension Scheme with effect

from 01.11.1993. The fifth respondent-Branch Manager, Governorpet, Vijayawada, where the petitioner was working at the relevant time, forwarded the names of the employees, who had opted for pension under the said pension scheme, including the name of the petitioner together with relevant records and option forms submitted by them. But in the Provident Fund statement for the year 1996, it was mentioned that the petitioner did not opt for the said pension scheme. The petitioner gave a representation to the Chief Manager, Provident Fund Department stating that he had opted for the pension scheme long back and requested the authorities to make necessary corrections in his records. Thereafter, the petitioner addressed another letter, dated 03.09.1999, to the second respondent - General Manager (PRS) stating that he had given his option for pension under the said pension scheme. Though the fifth respondent forwarded the option papers of the petitioner to the Regional Office on 25.08.2000, necessary corrections were not made by the authorities concerned. Therefore, the petitioner gave a letter to the second respondent on 02.06.2000. After addressing the said letter, the petitioner was under the impression that necessary corrections would be carried out in the records concerned.

While the matter stood thus, the petitioner opted for retirement under VRS and accordingly, retired on 31.03.2001 and while receiving retiral benefits, he was surprised to receive the EPF contribution made by the bank. Immediately, the petitioner addressed a letter to the second respondent on 02.06.2000 bringing the matter to his notice that he had opted for pension under the pension scheme and the contributions to EPF were not being made since 1994, returned the EPF contribution to the Bank, but the same was not received by the Bank. The petitioner stated that the said EPF amount can be adjusted towards the pension payable to him. The fifth respondent forwarded the name of

the petitioner to the Regional Personal Department, Zonal Office, Hyderabad along with sufficient documents produced by the petitioner to the effect that he had opted for pension, but the contribution was not remitted to the Provident Fund Department from the salary head. The Employees Provident Fund statement for the period ending March 1997, show that Bank contributions were stopped from December, 1996. The EPF statements of March 1998, March 1999 and March 2000, disclose that there were no bank contributions till the retirement of the petitioner under VRS. The fourth respondent addressed a letter, dated 06.06.2002, to the Pension Department, Mumbai to the effect that he had submitted option letter for pension under the pension scheme. As the pension was not being released, the petitioner approached this Court by filing W.P.No.474 of 2004.

This Court, while admitting the said writ petition passed interim order, dated 08.01.2004, directing the respondents to process the pension papers of the petitioner as per the letter, dated 06.06.2002, of the fourth respondent. The petitioner also made a representation to the respondents to comply with the directions of this Court, but there was no response. Thereafter, the petitioner got issued a legal notice, dated 19.04.2004, and as there was no response to the said notice also, he filed a Contempt Case No.880 of 2004 before this Court for not implementing the orders of this Court dated 08.01.2004. Thereafter, the third respondent-Zonal Manager issued the proceedings, dated 19.08.2004, stating that the petitioner did not submit the option form in the Branch office within the stipulated time and that his name was not included in the list submitted by the Regional Office, Vijayawada. According to the petitioner, his letter of option for pension, dated 30.06.1994, was received by the fifth respondent after attesting the same in the pro-forma. When the petitioner received EPF statement for March 1997, he came to know that his option form

was not properly acted upon and then, he gave a representation. Thereafter, the fifth respondent forwarded a copy of the option letter given by the petitioner through the letter, dated 25.08.2000, and requested the authorities to take up the matter with the Pension Department. Therefore, the present writ petition.

The respondents filed counter affidavit admitting that the petitioner joined in the bank in the year 1964 and retired from the service on 31.03.2001 under VRS. The pension scheme was introduced by the bank in the year 1994 as per the Central Bank of India (Employees') Pension Regulations 1993, and the employees opted for pension in lieu of Contributory Provident Fund pension scheme. The respondents denied that the petitioner *vide* option form, dated 30.06.1994, opted to become a member of the pension scheme and thereby, he ceased to be a member of the Contributory Provident Fund pension scheme with effect from 01.11.1993. The fifth respondent forwarded the names of the employees who had opted for pension under the pension scheme, but the said list does not indicate the name of the petitioner as one of the pension optees. The provident fund statement furnished by the bank to the petitioner indicates that he has not opted for pension under the pension scheme. The representation does not have any relevance, as it is not supported by any documentary evidence. The representation of the petitioner could not be considered, as his name was not found in the list of pension optees. It is a fact that the letter, dated 25.08.2000, addressed by the fifth respondent to the Regional Office only indicates that they forwarded a copy of the option letter of the petitioner available in his personal file. The said letter was not countersigned by the Branch Manager, who worked in June 1994, and it also does not indicate that the same was handed over to the bank. There is no record, neither in the branch office nor in the Regional Office, to fortify the

claim made by the petitioner that he opted for pension during the relevant period. As per the guidelines and regulations issued by the higher authorities, acknowledgement shall be given to the employees whenever they submit option form for pension. All the branches including the fifth respondent sent consolidated statements along with original option forms submitted by the employees exercising their option, in favour of pension scheme, to the Regional Office, Vijayawada, which in turn sent a consolidated statement to the Zonal Office, Hyderabad. The records do not support the claim of the petitioner. There was no surprise to the petitioner when he received the retiral benefits as he was fully aware that he had not opted for pension under the pension scheme. The respondents denied that that the Branch Manager forwarded the name of the petitioner to the Zonal Office or Regional Office. The petitioner tried to take advantage of the clerical mistake committed by the Zonal Office. The Rules do not enable any employee to opt for pension scheme as and when he feels convenient for him, as option should be exercised within the stipulated time. The letter of the fourth respondent reveals that the Governorpet branch sent the copy of the option letter of the petitioner for pension on 30.06.1994, but it does not confirm that his original pension option letter was received by the branch office and the same was forwarded to the Regional office and the name of the petitioner was included in the list of optees at the relevant time. The said letter also does not support that the petitioner exercised the option within the stipulated time and the same was communicated to the branch and forwarded to the authorities by the branch. The counter signature has to be made by the branch manager on each and every option form for the purpose of final record to cross-check at any point of time whenever there is a dispute. The petitioner did not explain as to how he came into possession of the official record of the bank. Accordingly, the respondents prayed for dismissal of the writ petition.

In reply affidavit, it is reiterated that the petitioner opted for pension scheme by submitting option form on 30.06.1994, and on such submission, he deemed to be a member of the pension scheme. Thereafter, the contribution made by the bank towards the Contributory Provident Fund scheme was withdrawn with effect from December 1996, as was done in case of the other optees. For the lapses on the part of the Branch Manager or Regional Manager at the initial stages, the petitioner cannot be deprived of his pensionary rights. Thereafter, the petitioner submitted the representation, dated 11.04.1997, but there was no response. The letter, dated 25.08.2000, addressed by the Branch Manager to the higher authorities, indicates that option form available with the bank and the same was forwarded. Once the option form is submitted, it is for the Branch Office to comply with all the formalities and for any lapse on the part of the bank officials, the petitioner cannot be found fault with. The allegation that the petitioner has not produced any supporting document showing that he has opted for pension within the stipulated time is misconceived. In respect of the existing employees, the Zonal officers were directed to forward the option letters to the Central office by 10.10.1994. Therefore, the option letter of the petitioner dated 30.06.1994 is well within the time prescribed for extending the pension scheme to the employees and the same was reflected by letter, dated 25.11.2000, and also the letter dated 06.06.2002. The non-remittance of the amounts to the P.F. Department clearly demonstrates that the bank proceeded on the presumption that the petitioner is eligible for pension as per the pension floated by the bank. Hence, the petitioner prays to allow the writ petition.

Learned counsel for the petitioner vehemently contended that the petitioner gave the option letter for pension on 30.06.1994, which is well within the time prescribed for extending the pension scheme to the employees. For the

reasons best known to the fifth respondent if the option form was not forwarded to the Zonal Office, the writ petitioner cannot be found fault with and he will not be deprived of his pensionary benefits. Learned counsel placed strong reliance on the letter, dated 25.8.2000, addressed by the fifth respondent to the Regional Office and the letter, dated 06.06.2002, addressed by the Regional Manager to the higher authorities. Placing reliance on the said two documents, the learned counsel contended that the bank has received the copy of the option letter, dated 30.06.1994, from the petitioner. Hence, he prays to allow the writ petition.

On the other hand, learned Standing Counsel appearing for the respondents vehemently contended that the option letter, dated 30.06.1994, said to have been given by the petitioner, does not contain the seal or signature of the Branch Manager. Learned counsel contended that the petitioner failed to produce any material to show that he has given an option for pension scheme within the time i.e., on or before 30.09.1994 and as the petitioner did not opt for the pension scheme within the time stipulated, which is mandatory, his name has not been considered and there is no record either at the Branch office or at the Regional Office in support of the claim made by the petitioner that he had opted for the pension scheme within the time prescribed and that the employees who submit option forms will be given acknowledgement, but no such acknowledgement has been filed, therefore, the writ petition is devoid of merit.

It is an admitted fact that the petitioner retired from service on 31.03.2001 under VRS. It is also not disputed that the first respondent, in the year 1994, introduced the Central Bank of India (Employees') Pension Regulations 1993, whereunder all the employees who were working as on

31.12.1993 can give their option for pension to the Branch Manager concerned and the Branch Manager has to forward the same to the Regional Manager. It is the specific case of the petitioner that he opted for pension scheme vide option form, dated 30.06.1994, as such, he became the member of the pension scheme and ceased to be a member of the Contributory Provident Fund pension scheme with effect from 01.11.1993. It is not in dispute that the petitioner was working as Officer Cashier as on the date of his retirement under VRS on 31.03.2001 in Branch Office at Governorpet, Vijayawada.

As per the proceedings, dated 28.04.1994, issued to all the Zonal Managers and Regional Managers, the Zonal Officers were directed that they should forward the option letters of the employees for pension scheme after expiry of the stipulated period viz., 31.07.1994 for eligible retired employees and 30.09.1994 for the existing employees in two separate lots to reach the Provident Fund Department at Central office by 10-07-1994 and 10-10-1994 respectively. Therefore, as seen from the proceedings, since the petitioner was working by that time, the pension forms, which have been submitted and forwarded to the Zonal office by the Branch Managers concerned, have to reach the central office by 10-10-1994. Therefore, from the proceedings, the deadline for receipt of option forms from the employees, who opt for pension scheme, in case of existing employees is 10-10-1994.

The learned counsel for the petitioner placed strong reliance on the letter, dated 06.06.2002, addressed by the Regional Manager to the Pension Department, Central Office. The relevant portion of the letter reads as under:

"On seeing EPF statement for March, 1999, wherein option for pension was

mentioned as 'No', Mr.Subba Rao had represented vide his letter dated 03.09.1999 that he had opted for pension and sought correction in PF Statement.

On taking up the matter with Governorpet Branch based on member's representation as said, the Branch had sent us copy of Option letter for pension dated 30.06.1994 submitted by the member duly attested by them. A copy of option letter is enclosed."

From the above letter it is seen that the fourth respondent observed that the petitioner and another had submitted option letters for pension.

The learned counsel for the petitioner placed strong reliance on the letter, dated 25.08.2000, addressed by the Manager to the fourth respondent stating that they are forwarding the copy of the option letter of the petitioner to take up the matter with the Pension Department for necessary action. Basing on these two documents, the learned counsel for the petitioner vehemently contended that the option letter for pension scheme has been submitted to the Governorpet branch on 30.06.1994. A copy of the option form submitted by the petitioner is filed. A perusal of this letter shows that the date of the option letter for pension is 30.06.1994. The document further shows that the signature of the member has to be attested by the Branch Manager or In charge of Department with office seal. This document does not contain the signature of the Branch Manager or seal of the office to show that it was received by the fifth respondent on 30.06.1994, but it shows that the same was attested by the Branch Manager on 19.09.2000. Therefore, basing on this document, it cannot be said that the petitioner exercised the option within the time stipulated by the

respondents i.e., on or before 30.09.1994.

It is specifically stated in the counter that as per the guidelines and circulars issued by the higher authorities, acknowledgement shall be given when the employees submit the option letters for pension scheme. No such acknowledgement was produced by the petitioner. It is not the case of the petitioner that no such procedure was followed by the respondents at the time of receiving the option forms. The letters of the respondents dated 25.08.2000 and 06.06.2002 do not indicate that the petitioner handed over the option form to the bank on or before 30.06.1994. The petitioner has not filed any record to support his claim that he had exercised the option for pension within the stipulated time i.e. 30.06.1994 or on or before 10.10.1994, which is the deadline, according to the pension scheme. Thereafter, the impugned proceedings were passed on 19.08.2004. The relevant para of the impugned proceedings reads as under:

> "On verification of the records/papers related to your claim we find certain discrepancies in the alleged attestation of Governorpet Br., made in the copy of the option memo form dated 30.06.1994 which was enclosed to the letter of Regional Manager, Vijayawada, dated 06.06.2002. Further it is confirmed by the Governorpet Branch that there was no attestation of the Branch manager on the pension option form. It may be noted that any pension option letter without attestation by the Branch Manager is not valid.
>
> On checking up the records at our end, we find that you have not submitted your pension option to the branch with in the time

> stipulated. Your name was also not included in the list submitted by the branch to the Regional Office, Vijayawada. Even in the consolidated list of the all the pension optees relating to the branches and falling under the jurisdiction of Vijayawada Region, we do not find your name. Hence, the list, submitted from Regional Office, Vijayawada, to Zonal Office, Hyderabad and from Zonal Office, Hyderabad to Central Office, Mumbai also did not contain your name."

From the above proceedings, it is clear that as the petitioner has not submitted the option letter, his name does not figure in the list submitted by the Branch Office to the Regional Office or in the list submitted by the Regional Office to the Zonal Office or the Zonal Office to the Central Office. The order under challenge, does not suffer from any legal infirmities requiring interference of this Court.

However, the learned counsel for the petitioner placed strong reliance on the decision rendered by the Patna High Court in ***KISHUN LALL*** v. ***CHAIRMAN AND MANAGING DIRECTOR, UCO BANK AND OTHERS***, wherein at para 3, it is held:

> "From the material available on record, as discussed above, this much is obvious that petitioner had exercised option and had filed petition to the aforesaid effect. In such a situation, it is difficult to accept the stand of the respondents that the petitioner did not exercise option for pension. However, it may be case that said option paper was not received by the zonal office or the head office but for the laches on the part of employer of the respondent, the petitioner cannot be held to be at fault."

The above decision has no application to the present facts of the case, as there is no material filed by the petitioner to show that he opted for pension within the stipulated time, whereas in the aforesaid case, there was material on record to show that the petitioner therein had given an option for pension on 27.12.1994. The Patna High Court, in the aforesaid circumstances, held that if the option papers were not received at the Zonal or Head office, the petitioner-employee cannot be found fault. But in the instant case, as per the material available on record, the petitioner did not submit the option form within the stipulated time and the petitioner has not produced any material to show that he submitted option form either on 30.09.1994 or on or before 10.10.1994. Therefore, there is no ground to interfere with the impugned proceedings and the writ petition is devoid of merits and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed without any order as to costs.

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K.C. BHANU, J.

Date:03-02-2005.

GS

To

1. The Managing Director , Central Bank of India,
Central Office; Chander Mukhi, Nariman Point
Mumbai 400 001.

2. The General Manager (PRS), Central Bank of India,
Central Office: Chander Mukhi, Nariman Point,
Mumbai 400 001.

3. The Zonal Manager, Central Bank of India,
Zonal Office : Bank Street, Koti, Hyderabad.

4. The Regional Manager, Central Bank of India,
   Vijayawada Regional Office, Bandar Road, Vijayawada.

5. Branch Manager, Central Bank of India,
   Governorpet Branch, Governorpet, Vijayawada 520002.

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